IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.101 OF 2005

Rai Bahadur Gujarmal Modi
and Brothers Pvt.Ltd. Applicant

versus

Godfrey Philips India Ltd. Respondent

M.S.Doctor with Kalpesh Joshi i/by M. Ranchoddas & Co. for applicant company.
V.R.Dhond i/by P.J.Rauger for respondent.
N.H.Seervai with F.Pooniwalla - Intervener
Neville Master i/by Cr.Bay. & Co. for applicant in Company Application No.868 of 2005

CORAM : S.C.DHARMADHIKARI, J.
DATE : 6th July 2006
PC :

1. The company application seeks the following relief :-

> "(a) that this Hon'ble Court give directions to said Godfrey Philips Company namely Godfrey Philips India Ltd. to forthwith issue duplicate share certificates for 8,350 equity shares held by the Applicant Company"

2. Shri Doctor - learned counsel appearing for the applicant submits that the applicant company is incorporated under the Companies Act and its

objects, inter alia, are to invest in any movable or immovable property including shares.

3. The respondent also is a public limited company registered and incorporated under the Companies Act. It's objects are set out in the affidavit in support.

4. It is the case of the applicant that it held 33,400 equity shares of respondent. According to Shri Doctor, the title to the shares has never been disputed. However, in or around February 2002, on checking the records, the applicant company found that the physical balance of the shares with the applicant was 25,050 shares. In other words, out of 33,400 equity shares that the applicant holds in the respondent company, in the record only 25,050 shares are mentioned.. The applicant is, therefore, not having account of 8,350 equity shares. According to Shri Doctor, the shares were issued as bonus shares in 1992. However, physical delivery of the shares was not received. The applicant, therefore, addressed a letter dated 1st February 2002 to the share transfer agents of respondent and requested for certificates of 8,350 equity shares, which were not with the applicant company. A copy of this

letter, according to Shri Doctor, is annexed to the affidavit in support of present company application. Further, the applicant on the basis of information received from the share transfer agents addressed another letter on 17th May 2002 for complying with the formalities for issuance of duplicate share certificates. It is the applicants' case that they have submitted indemnity bond supported by a surety agreement, affidavit of director of applicant, all in prescribed form to the share transfer agents.

5. Shri Doctor submits that in accordance with the mandate of Section 84(2) of the Companies Act, 1956, the respondent was bound to issue duplicate share certificates. He submits that respondent has entered into a listing agreement with the Stock Exchange, Mumbai and in terms of clause 3(e) of the listing agreement, the respondent was bound to issue new certificates. The period prescribed in that behalf is six weeks and, therefore, respondent was obliged to forward the duplicate share certificates in respect of 8,350 equity shares latest by June 2002.

6. Shri Doctor submits that both, the respondent as well as share transfer agent, have flouted the

mandate of aforesaid provisions and, therefore, the applicant had to approach the respondent once again. The share transfer agent of the respondent informed the applicant that all necessary formalities for issuing duplicate share certificates have been completed and as sufficient time has lapsed, the request is forwarded to the Board of Directors of respondent. Communication in that behalf is annexed as Annexure-C to the affidavit in support. He submits that correspondence followed between the applicant and the respondent and it's share transfer agents. Copies of letters are annexed to the affidavit in support.

7. Shri Doctor submits that it is only on 1st May 2003 by a letter of that date that the applicant was informed by the respondent that Shri K.K.Modi, who is also a director and share holder of the applicant, had objected to issuance of the duplicate shares, and, therefore, the request of applicant has not been considered.

8. Shri Doctor submits that this was contrary to the stand already taken and respondent had never referred to any objection and ought to have issued duplicate shares, as requested. According

to Shri Doctor the respondent was bound by the mandate of the Companies Act and, therefore, the obligation thereunder has been flouted and the stand is plainly contrary to law.

9. Shri Doctor submits that there has been prolonged correspondence with the company as also with the statutory bodies including SEBI.. He submits that the SEBI took a stand that the matter does not fall within their regulatory powers. He submits that the applicant after the stand of SEBI, once again approached the company. He points out that there is a pending litigation. He submits that Shri K.K.Modi (the objector) was aware of such pendency and he was also aware that the board was considering the request of applicant. In these circumstances, his objections should not have been entertained.

10. Shri Doctor points out that as far as title to the shares is concerned, there is no dispute and in that behalf he invites my attention to the copies of dividend warrants which have been issued in respect of 8,350 equity shares as also balance 25,050 shares. Shri Doctor submits that the applicant has suffered a tremendous loss by non issuance of duplicate shares and therefore,

this Court should exercise its jurisdiction under the Companies Act and issue necessary orders and directions and more particularly the one that is prayed. He submits that the law is well settled that once the applicant company is a registered share holder and it's name appears in the register of share holders, then duplicate shares must be issued. He submits that the stand in the advocate's letter is an after thought and that once dividend warrants having been issued, the respondent cannot put forward plea of title. On the other hand, the objector should file a suit and his remedy is not to approach the Company Court to restrain delivery of duplicate shares to which the applicant is entitled in law. He cannot prevent such physical delivery.

11. On the other hand, Shri Seerwai - learned senior counsel appearing for the applicant in Company Application No.868 of 2005 submits that the Company Court has no jurisdiction. He submits that section 84(2) of the Companies Act, 1956 will have to be read with the definition of term "Court" appearing in section 2(11) as also Section 10 thereof. He submits that the Company Court has no jurisdiction to entertain highly disputed and debated issues and complicated

questions of title. The remedy is to approach a Civil Court and seek appropriate declarations. He submits that as far as facts in hand are concerned, there is a judgement delivered by the Supreme Court in the dispute between the parties to the company application and it is held that the group which is headed by Shri K.K.Modi is entitled to the shares in question. The other Directors of the applicant company cannot get any relief in this case once such is the case. They are aware of the same, and therefore, cannot institute present application. In these circumstances, this is not a matter where this Court should exercise its jurisdiction under the Companies Act.

12. Shri Seerwai has invited my attention to the decisions of this Court reported in AIR-1993-Bom-392 (MSFC, Bombay Vs. Ballarpur Ind. Ltd. Vs. The Official Liquidator, High Court Bombay and Liquidator of M/s.Atrois Chemicals Pvt.Ltd.) and 1992(3)-Bom-CR-310 (Santosh Poddar and another Vs. Kamalkumar Poddar and others) and the Calcutta High Court reported in Vol.108-Company Cases - 680 (Inter Sales Vs. Reliance Industries Ltd. and others). He submits that the Division Bench decision lays down the principle

which has to be applied in this case and the Company Court can only pass orders which are contemplated by the Companies Act and in that behalf Section 2(11) R/W Section 10 would be the guiding factor. The Calcutta High Court decision relied upon (supra) is on some what identical issue. He has tendered a copy of the decision of Supreme Court reported in (1998)3-SCC-573 (K.K.Modi Vs. K.N.Modi and others).

13. Shri Dhond appearing for the respondent has invited my attention to the affidavit which is filed. He submits that the entire dispute is pertaining to ownership of shares. In para 6 of the affidavit in reply the litigations have been referred to. He submits that in such circumstances the respondent does not want to be a party to further litigation and would rather keep the issue of handing over these shares in abeyance till the applicant obtains appropriate orders from a Civil Court.

14. Since reliance is placed on Section 84 of the Companies Act, it is necessary to reproduce the same :-

"84. Certificate of shares.-

(1) A certificate, under the common seal of the company, specifying any shares held by any member, shall be prima facie evidence of the title of the member of such shares.

(2) A certificate may be renewed or a duplicate of a certificate may be issued if such certificate -

(a) is proved to have been lost or destroyed, or

(b) having been defaced or mutilated or torn is surrendered to the company.

(3) If a company with intent to defraud renews a certificate or issues a duplicate thereof, the company shall be punishable with fine which may extend to ten thousand rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extended to six months, or with fine which may extend to ten thousand rupees, or with both.

(4) Notwithstanding anything contained in the articles of association of a company, the manner of issue or renewal of a certificate or issue of a duplicate thereof, the form of a certificate (original or renewed) or of a duplicate certificate, the form of such registers, the fee register of members or in the register of renewed or duplicate certificates, the form of such registers, the fee on payment of which, the terms and conditions, if any (including terms and conditions as to evidence and indemnity and the payment of out-of-pocket expenses incurred by a company in investigating evidence), on which a certificate may be renewed or a duplicate thereof may be issued, shall be such as may be prescribed."

15. Section 84 falls in Part-IV of the Act which

deals with nature of Share Capital and Debentures, it's numbering and certificate of shares. It is not in dispute that the shares or debentures of any member in a company shall be moveable property, transferable in the manner provided by the articles of the company. Each share in a company having a share capital, shall be distinguished by appropriate number. Section 84(1) provides for issuance of certificate under the common Seal of the company specifying number of shares held by any member and it shall be prima facie evidence of title of the member to such shares. Sub section 2 provides that a certificate may be renewed or a duplicate share certificate may be issued, if such certificate is proved to have been lost or destroyed or having been defaced or mutilated or torn and is surrendered to the company. Sub sections 3 and 4 need not be referred to but a reading thereof would make it clear that the company can be punished for it's act of renewing a certificate or issuing a duplicate certificate if it is with an intention to defraud.

16. I had invited Shri Doctor's attention repeatedly to the fact that in the company application a prayer is made for issuance of

duplicate share certificates for 8,350 equity shares. However, in the affidavit in support it is not the case of the applicant that share certificates in respect of 8,350 equity shares earlier issued, are lost or destroyed. It is not it's case that they are mutilated, defaced or torn and, therefore, another certificate needs to be issued. The case set out is that the applicant holds 33,400 equity shares of the respondent. However, in it's records it does not find anything pertaining to 8,350 equity shares. The physical balance is 25,050 equity shares. In para 6 of the affidavit in support of this application, this is what is stated:-

> "The Applicant Company holds 33,400 equity shares of said Godfrey Philips. The title of the Applicant Company to the said shares has never been in question, as the Applicant Company has regularly been receiving dividend on the said shares. On checking its records in or around February 2002, the Applicant Company found that the physical balance of the said shares with the Applicant Company was 25,050 i.e. 8,350 equity shares short. In fact, the Applicant Company had not received the 8,350 equity shares from said Godfrey Philips when these shares were issued as bonus shares in 1992. In these circumstances, the Applicant Company addressed a letter dated 1st February 2002 to M/s.Sharepro Services, the Registrars and Share Transfer Agents of the said Godfrey Philips, and requested for certificates for 8,350 equity shares which were not

> with the Applicant Company and information regarding the formalities to be completed in this regard. Hereto annexed and marked EXHIBIT "A1" is a copy of the said letter dated 1st February 2002."

17. Shri Doctor upon noticing the averments sought time to take appropriate instructions but I am informed today that the applicant desires an order being passed on this company application itself.

18. In my view, when Section 84(2) of the Companies Act is sought to be invoked, it is necessary that the applicant who has approached the Company Court, should plead and prove that a certificate under the common seal of the company has been issued. In this case, the applicant will have to show that the certificate is with regard to 33,400 equity shares. That share certificate has been lost or destroyed. It is not a case of renewal. The company application seeks issuance of duplicate share certificates. Once such is the nature of request, then firstly it will have to be proved that a certificate is issued with regard to 33,400 equity shares. Thereafter, it will have to be proved that it is lost or destroyed and it is only when there is no

dispute that such a certificate was issued, that the Company Court can be called upon to pass appropriate orders. In the present case, the plea is that the record of the applicants does not indicate anything pertaining to 8,350 equity shares. It is not the applicants' case that it has a certificate which evidences issuance of 33,400 equity shares. It is now praying that such certificate should be issued. Naturally, when such is the nature of request of applicants, the company has firstly termed the request as made belatedly and secondly that such a request cannot be considered because of the objection raised by the objector. Thirdly, when proceedings between parties are pending. My attention has been invited by Shri Seerwai to the affidavit filed in support of Company Application No.868 of 2005. He submits that various litigations between sub groups are going on which are referred to in para 5 of the affidavit filed in support of intervenor's company application. He refers to a Memorandum of Understanding and litigations between sub groups arising out of the same and which are pending in the Delhi High Court and Supreme Court. He has also referred to the MOU, a copy of which is annexed as Annexure-A to the affidavit of K.K.Modi.

19. In my view, once the request of the applicant cannot be said to be covered by Section 84(2) and it being made belatedly, it is not a fit case for entertaining the company application. For the reasons that have been set out hereinabove, it is not a case where the Company Court can be called upon to issue any direction. The company application is, therefore, dismissed.

20. However, I have not gone into the rival contentions with regard to the jurisdiction of Company Court because treating this application as made u/s 84(2), I have scrutinised the same. Once I find that the application cannot be entertained as relief is not falling within the ambit and scope of the aforesaid provision, then I do not deem it necessary to go and decide the issue of jurisdiction of Company Court. So also, any observations made, are strictly for the disposal of present application and shall not prevent the applicant from seeking appropriate reliefs with regard to title of the shares. This order does not prevent the applicant in future from invoking Section 84(2) in the event it is able to establish the existence of a certificate

with regard to 33,400 equity shares and prove that the same has been lost or destroyed. Company Application stands dismissed subject to above.

21. Since I have heard Shri Seerwai appearing for Shri K.K.Modi - the objector at length, it is not necessary to pass separate orders on Company Application No.868 of 2005. In any event, the same is only seeking intervention and the said request was already granted. Company Application NO.868 of 2005 accordingly stands disposed of. No order as to costs.

(S.C.DHARMADHIKARI, J.)